



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Early Learning

☐ Permanent Rule
☒ Emergency Rule

Effective date of rule:

Permanent Rules

☐ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose:

The purpose of this rule is to allow the new Department of Early Learning to continue performing background clearances on and providing due process hearing procedures to child care providers after the department separated from the Department of Social and Health Services and became a new department on July 1, 2006. No rules are being appealed or amended, but obsolete DSHS rules about background checks and hearings are being replicated in new WAC Title 170, which is the new Department of Early Learning title. This is an extension to allow for more public comment.

Citation of existing rules affected by this order:

Repealed: None Amended: None Suspended: None

Statutory authority for adoption: Chapter 265, Laws of 2006, Section 301

Other authority : Chapter 265, Laws of 2006

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____.(date)

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____ e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: SSHB 2964 (chapter 265, Laws of 2006) created the new Department of Early Learning, effective July 1, 2006. The department had existed as Division of Child Care & Early Learning, a part of DSHS. One function of the department is to perform background checks on applicants for child care licenses and workers in child care. Another function is to process administrative hearings when an applicant for a child care license is denied the license or denied clearance to work with children. With the creation of the Department of Early Learning, child care background check and hearing rules Title 388 WAC became obsolete for the purpose of regulating child care. These new rules are needed to allow the new Department of Early Learning to continue performing background checks and conducting hearings. This is vital to the health and safety of children in care. These rules are necessary to implement the Legislature intent in SSHB 2964. This extension is required to gather meaningful public input.

Date adopted:

NAME (TYPE OR PRINT)

Jone Bosworth

SIGNATURE

TITLE

Director, Dept of Early Learning

CODE REVISER USE ONLY

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>72</u>	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>72</u>	Amended	___	Repealed	___

DEL BACKGROUND CHECK RULES

170-06-0010 Purpose and Scope

(1) The purpose of this chapter is to establish rules for background checks conducted by the Department of Early Learning (DEL). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or under DEL approval. Background checks are conducted to find and evaluate any history of criminal convictions, findings of abuse or neglect of children or other vulnerable persons, adverse licensing actions, or other information that raises concerns about an individual's character and suitability to care for or have unsupervised access to children in child care.

(2) This chapter applies to applicants for child care agency licenses, licensees, persons working in or living on the premises of a child care agency, and child care providers who are authorized by DEL to care for children. These rules apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to care for or to have unsupervised access to children after the effective date of this chapter.

(3) If any provision of this chapter conflicts with a provision relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) Effective date: These rules are effective July 3, 2006, and apply prospectively.

[Statutory Authority: Laws of 2006, ch. 265 § 301.]

170-06-0020 Definitions

The following definitions apply to this chapter:

(1) **"Authorized"** or **"authorization"** means qualified by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(2) **"DEL"** or **"department"** means the department of early learning.

(3) **"Director's List"** means a list of crimes and civil adjudications, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care.

(4) **"Disqualified"** means DEL has determined that a person's background information prevents that person from being authorized by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(5) **"Unsupervised access"** means:

- (a) An individual will or may have the opportunity to be alone with a child in care at any time for any length of time; and
- (b) Neither the licensee, a qualified employee, nor a relative or guardian of the child is present.

170-06-0030 Reason for background checks

The department does background checks to help safeguard the health, safety and well being of children in licensed child care agencies and in the care of DEL-approved providers. By doing background checks, the department reduces the risk of harm to children from caregivers who have been convicted of certain crimes or who have been found to have been a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

170-06-0040 - Background inquiries

(1) At the time of application for a license or for authorization to care for or have unsupervised access to children in child care, a completed background check form and finger print card, if required, must be submitted to the department for each person who will have unsupervised access to any child in care. This includes:

- (a) Each applicant for a license;
- (b) All staff of the licensed child care agency, whether they provide child care or not;
- (c) Assistants;
- (d) Volunteers;
- (e) Contracted providers; and
- (f) Each person living on the premises of a licensed facility who is 16 years of age or older.

(2) Each person identified in this section must consent to and authorize the department to access his or her criminal history and any information contained in any records about the person that are maintained by the Department of Social and Health Services, including Child Protective Services, Adult Protective Services, the Division of Home and Community Services, the Division of Residential Care Services, and the Division of Licensed Resources.

(3) When a licensee plans to add new staff, assistants, volunteers, or contracted providers, or when any person who is 16 years old or older moves onto the premises, the licensee shall require each person to complete and submit to the licensee a criminal history and background check form that must be submitted to DEL for processing before the date of hire or the date the individual moves onto the premises, as applicable.

(4) A person who has not been formally authorized by DEL to care for or have unsupervised access to children in child care may not have unsupervised access to any child in care.

(5) The department will discuss the result of the criminal history and background check information with the licensee, when applicable.

170-06-0050 Department action following completion of background inquiry

After the department receives the background information it will:

(1) Compare the background information with convictions/actions posted on the DEL director's list of disqualifying convictions/actions. The complete list can be found on the DEL website or by calling any DEL office.

(2) Review the background information using the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(e) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(f) A person will not be authorized to have unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(g) A person who has a "founded" finding for child abuse or neglect will not be authorized to have unsupervised access to children during the administrative hearing and appeals process.

(3) Conduct a character, competence and suitability assessment of the applicant, licensee, staff member, assistant, volunteer, contacted provider, or anyone living on the premises of a child care facility, if the individual is not automatically disqualified by a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult, under the DEL director's list of disqualifying crimes and actions.

(4) Notify the licensee or child care provider whether or not the department is able to approve the

applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility to care for or have unsupervised access to children in child care.

170-06-0060 Additional information the department may consider

(1) Upon request, the licensee or any person who requests authorization to care for or to have unsupervised access to any child in care must provide to the department any additional reports or information it requests to assess the person's character, suitability and competence to have unsupervised access to children in care. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

Any evaluation requested under this section must be by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(2) The applicant licensee or the person being evaluated must give the department permission to speak with the evaluator in WAC 170-06-0060(1)(a) through (d) prior to and after the evaluation.

170-06-0070 Disqualification

(1) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed child care facility who has a background containing any of the convictions/actions posted on the DEL secretary's list of permanently disqualifying convictions/actions, shall be permanently disqualified from providing licensed child care or having unsupervised access to any child in care.

(2) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility who has a background containing any of the convictions posted on the DEL secretary's list of nonpermanent disqualifying convictions shall be disqualified from providing licensed child care or having unsupervised access to any child in care for five years after the conviction date.

(3) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility shall be disqualified from providing licensed child care or having unsupervised access to any child in care if there is background information that the person:

- (a) Has been found to have committed child abuse or neglect, unless the department determines that the person does not pose a risk to a child's safety and well-being;
- (b) Is the parent of a child who has been found to be a dependent child as defined in chapter 13.34 RCW unless the department determines that the person does not pose a risk to a child's safety and well-being;

- (c) Abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult as defined in chapter 74.34, unless the department determines that the person does not pose a risk to a child's safety and well-being;
 - (d) Had a license denied or revoked from an agency that regulates care of children or vulnerable adults, unless the department determines that the person does not pose a risk to a child's safety and well-being.
- (4) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing licensed child care or having unsupervised access to any child in care if :
- (a) The licensee attempts to obtain a license by deceitful means, such as making false statements or omitting material information on the application;
 - (b) The staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility attempted to become employed, volunteer, or otherwise have unsupervised access to children by deceitful means, such as making false statements or omitting material information on an application to work or volunteer at a licensed child care agency or to otherwise provide child care;
 - (c) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children are present or presented a risk of harm to any child in care; or
 - (d) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility has attempted, committed, permitted, or assisted in an illegal act on the premises of a home or facility providing care to children. For purposes of this subsection, a licensee attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred.
- (5) A licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing child care or having unsupervised access to any child in care if the person has background containing information other than conviction information that the department determines:
- (a) Makes the person not of suitable character and competence or of sufficient physical or mental health to meet the needs of any child in care; or
 - (b) Places any person at a licensed child care facility at risk of harm.

170-06-0080 Notification of Disqualification

- (1) The department will notify in writing the applicant, care provider, employer, or licensee if the individual is disqualified by the background check from being authorized to care for children or to have unsupervised access to children in child care.
- (2) If the department sends a notice of disqualification, the applicant will not receive a license, contract, certification, or be authorized to have unsupervised access to children in child care.

170-06-0090 Administrative hearing to contest disqualification

- (1) Any person seeking a license or employment with a licensed facility may request an administrative hearing to contest the department's decision process to disqualify him or her from having unsupervised access to any child in care. *Provided*, An individual shall not have the right to challenge a discretionary determination made pursuant to WAC 170-06-0070(3).
- (2) Prospective volunteers, interns, contracted providers, or those seeking certification do not have the right to appeal the department's decision to disqualify them from having unsupervised access to any child in care.
- (3) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.
- (4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW), pursuant to WAC chapter 170-03.

170-06-0100 Request for administrative hearing

- (1) Any person who has a right to contest a decision to deny a license or disqualify them from having unsupervised access to any child in care based on an evaluation of background check information must request a hearing within twenty-eight days of receipt of the decision.
- (2) A request for a hearing must meet the requirements of WAC chapter 170-03.
- (3) Any decision by the department denying a license or disqualifying a person from having unsupervised access to any child in care is effective immediately upon notice and shall continue pending a final administrative decision on the merits.

170-06- 0110 Limitations on Challenges to Disqualifications

- (1) If the denial or disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.
- (2) If the denial or disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation a vulnerable adult as defined in chapter 74.34, the appellant cannot contest the finding if:
 - (a) The appellant was notified of the finding by DSHS and failed to request a hearing to contest the finding; or
 - (b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the denial or disqualification is based on a court order finding the appellant's child to be dependent as defined in chapter 13.34 RCW, the appellant cannot contest the finding of dependency in the administrative hearing.